

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

WEST BEND MUTUAL INSURANCE
COMPANY,

Plaintiff,

vs.

JEANNE HENTZ, CENTRAL LABORERS'
PENSION FUND, CENTRAL LABORERS'
WELFARE FUND, and CENTRAL
LABORERS' ANNUITY FUND,

Defendants.

Case No. 11-cv-1079-JPG-SCW

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff West Bend Mutual Insurance Company's ("West Bend") motion for summary judgment (Doc. 22). Defendants Central Laborers' Pension Fund, Central Laborers' Welfare Fund, and Central Laborers' Annuity Fund (collectively "Central Laborers'") filed their response (Doc. 24). Defendant Jeanne Hentz ("Hentz") failed to respond.

This declaratory judgment action stems from the theft of a CD-ROM from Hentz's personal vehicle while she was an employee of Kevin W. Bragee, CPA, LLC, an accounting firm. Central Laborers' were clients of the accounting firm, and the CD-ROM contained personal identifying information of Central Laborers' beneficiaries. As a result of the theft, Central Laborers' incurred approximately \$200,000 in damages from notifying beneficiaries of the theft and taking measures to protect the beneficiaries against the misuse of their personal identifying information. In an effort to recover their damages, Central Laborers' filed its

complaint against Hentz in the Circuit Court of Morgan County, Illinois, alleging negligence and breach of an implied contract.

In effect at the time of the theft were two West Bend insurance policies, an automobile policy and a business policy, issued to the accounting firm. Both policies contained “in care of” exclusions. Specifically, the West Bend automobile policy contains an exclusion for “[p]roperty damage’ to or ‘covered pollution cost or expense’ involving property owned or transported by the ‘insured’ or in the ‘insured’s’ care, custody, or control.” Doc. 2-2, p. 12. The West Bend business policy at issue similarly includes an exclusion for “[p]ersonal property in the care, custody or control of the insured.” Doc. 2-3, p. 43.

Hentz also had a homeowner’s insurance policy through Nationwide Insurance Company (“Nationwide”) that contained a similar “in care of” provision. The Nationwide policy provided that the policy did not cover “[p]roperty damage’ to property rented to, occupied or used by or in the care of the ‘insured’.” *Nationwide Ins. v. Central Laborers’ Pension Fund*, 704 F.3d 522, 525 (7th Cir. Jan. 11, 2013). In a similar declaratory judgment action, this Court found that the Nationwide policy’s “in care of the insured” exclusion applied and Nationwide had no duty to defend or indemnify Hentz. On appeal, the Seventh Circuit Court of Appeals affirmed this Court’s decision in *Nationwide Ins. v. Central Laborers’ Pension Fund*, 704 F.3d 522 (7th Cir. Jan. 11, 2013).

West Bend filed the instant declaratory judgment action, asking this Court to declare that it has no duty to defend or indemnify Hentz in the state-court lawsuit under either of the two policies it issued to the accounting firm. Central Laborers’ response concedes that West Bend has no duty to defend or indemnify Hentz under either of the two insurance policies in light of the Seventh Circuit’s decision in *Nationwide Ins. v. Central Laborers’ Pension Fund*, 704 F.3d

522 (7th Cir. Jan. 11, 2013), noting West Bend's policies contain "nearly identical 'in the care of' exclusion language." Doc. 24, p. 2.

For the foregoing reasons, the Court **GRANTS** West Bend's motion for summary judgment (Doc. 22) and **DIRECTS** the Clerk of Court to enter judgment accordingly and declaring:

Business Auto Policy number CPB 0589907 and Smart Business Package Policy number BOB 0589906 04 issued by plaintiff West Bend Mutual Insurance Company to Kevin W. Bragee, CPA, LLC, does not afford coverage to the defendant Jeanne Hentz for theft of a CD-ROM from her automobile alleged to have occurred on October 31, 2010, which forms the basis of *Central Laborers Pension Fund v. Hentz*, No. 2011-L-12, in the Circuit Court of the Seventh Judicial Circuit, Morgan County, Illinois;

Plaintiff West Bend Mutual Insurance Company owes no duty to defend defendant Jeanne Hentz against any of the allegations in the complaint in *Central Laborers Pension Fund v. Hentz*, No. 2011-L-12, in the Circuit Court of the Seventh Judicial Circuit, Morgan County, Illinois; and

Plaintiff West Bend Mutual Insurance Company owes no duty to indemnify defendant Jeanne Hentz for any judgment entered against her in *Central Laborers Pension Fund v. Hentz*, No. 2011-L-12, in the Circuit Court of the Seventh Judicial Circuit, Morgan County, Illinois, or for any agreement entered into in settlement of that case.

IT IS SO ORDERED.

DATED: March 25, 2013

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE